



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Tomohiro Nishi, et al.  
Serial No. : 10/085,659  
Filed : February 26, 2002  
For : OPTICAL STATE MODULATION METHOD AND  
SYSTEM, AND OPTICAL STATE MODULATION  
APPARATUS  
Examiner : Yenke, Brian P.  
Art Unit : 2614  
Confirmation No. : 8660

745 Fifth Avenue  
New York, NY 10151  
(212) 588-0800

**EXPRESS MAIL**

Mailing Label Number: EV 713836745 US

Date of Deposit: June 28, 2006

I hereby certify that this paper or fee is being deposited with the  
United States Postal Service "Express Mail Post Office to  
Addressee" Service under 37 CFR 1.10 on the date indicated  
above and is addressed to: **Mail Stop Appeal Brief,**  
**Commissioner for Patents, P.O. Box 1450, Alexandria, VA**  
**22313-1450.**

Barnet Shindler  
(Typed or printed name of person mailing paper or fee)

Barnet Shindler  
(Signature of person mailing paper or fee)

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop Appeal Brief  
Commissioner For Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1450

Sir:

Applicants request review of the Final Rejection dated March 7, 2006 in the above-captioned application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. Please consider the reasons stated herein.

## **REASONS FOR REQUEST**

Claims 1-23 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over WO 01/33846 to Burstyn (hereinafter, merely “Burstyn”).

Claim 1 recites, *inter alia*:

“An optical state modulation method comprising:

periodically modulating luminance of an original display image in temporal domain so as to generate an optical state variation on a recorded image that is obtained by image-capturing of the modulated display image...

utilizing a rotation filter, including a rotate-able filter part having a sinusoidal density variation along its circumferential direction, in said luminance modulation.” (emphasis added)

## **ARGUMENTS**

### **The §103 Rejections Should be Withdrawn Because the Cited References Do Not Disclose Each and Every Element Recited in the Claims**

It is respectfully submitted that Burstyn fails to teach or suggest the features of claim 1. Specifically, the Office Action states that “Burstyn does not explicitly recite a rotating filter...” (See Office Action page 3).

The Examiner asserts that it would have been obvious to one of ordinary skill in the art for Burstyn to “utilizing a rotation filter, including a rotate-able filter part having a sinusoidal density variation along its circumferential direction, in said luminance modulation.”

Applicants traverse and request that the Examiner provide documentary evidence to support the Examiner's position in accordance with MPEP 2144.03(C). Moreover, Applicants submit that Burstyn does not provide a rotation filter which includes a rotate-able filter part having a

sinusoidal density variation along its circumferential direction, in said luminance modulation as suggested by the Examiner.

Applicants submit that Burstyn fails to teach or suggest the above-identified features of claim 1. Specifically, Applicants submit that there is no teaching or suggestion of an optical state modulation method utilizing a rotation filter, including a rotate-able filter part having a sinusoidal density variation along its circumferential direction, in said luminance modulation, as recited in claim 1.

Applicants submit that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference or to combine reference teachings either in the references themselves or in the general knowledge available to one of ordinary skill in the art; second, there must be a reasonable expectation of success; third, the prior art reference or references must teach or suggest all the claim limitations. M.P.E.P. § 2143.

Applicants submit that the fact that Burstyn relates to preventing the illegal recording of film and video through a film anti-piracy system by introducing distortion into an illegally copied image while maintaining a high quality image for viewing by a legitimate audience is not sufficient to assert that it would have been obvious for one of ordinary skill in the art to clarify Burstyn to teach utilizing a rotation filter, including a rotate-able filter part having a sinusoidal density variation along its circumferential direction, in said luminance modulation, as recited in claim 1. Applicants submit that there is no suggestion or motivation for one skilled in the art to utilize a rotation filter having a rotate-able filter part in luminance modulation.

Therefore the instant invention is not obvious and Applicants respectfully submit that claim 1 is patentable.

Therefore, Applicants submit that independent claim 1 is patentable.

For reasons similar to those described above with regard to independent claim 1, independent claims 10-23 are also believed to be patentable.

Therefore, Applicants submit that independent claims 1 and 10-23 are patentable.

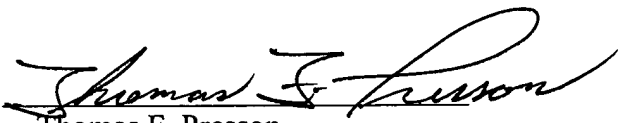
The other claims are each dependent from one of the independent claims discussed above and are therefore believed patentable for at least the above-identified reasons.

Applicants respectfully request early passage to issue of the present application.

Please charge any additional fees or credit any overpayment by reason of this request to Deposit Account No. 50-0320.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP  
Attorneys for Applicants

By:   
Thomas F. Presson  
Reg. No. 41,442  
(212) 588-0800